IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21..12..2004

Coram

The Honourable Mrs. Justice PRABHA SRIDEVAN

Writ Petition Nos.11654 to 11657 of 2004

L. Niranjan Kumar .. Petitioner in W.P. No.11654 of 2004

R. Shanmugam .. Petitioner in W.P. No.11655 of 2004

G. Subash .. Petitioner in W.P. No.11656 of 2004

B. Ravi .. Petitioner in W.P. No.11657 of 2004

Versus

University of Madras,
Chepauk, Chennai-5,
rep. by its Registrar. .. Respondent in all the Petitions

PRAYER : Writ Petitions filed under Article 226 of the Constitution of India for issuance of writs of certiorarified mandamus calling for the records of the respondent made in his official communication [i] F1 [A] ESTT/Asst/2004/501 dated 29.3.2004 [in WP.Nos.11654, 11655 & 11656/04] [ii] F1[A] ESTT/Asst/2004/568 dated 8.4.2004 [in WP.11657/04] respectively and quash the same and consequently direct the respondent in all the petitions to [a] redesignate and regularise the petitioner in WP.11654/04 as Computer Operator W.E.F. From 23.2.95 in the Scale of Rs.5500 - 175 - 9000 [b] implemnet the syndicate Resolution dated 11.7.97 and redesignate and regularise the petitioner in WP.11655/04 as Computer Operator W.E.F. 10.1.94 in the Scale of Rs.5,500 - 175 - 9000 [in WP.11655/04] [c] redesignate and regulaise the petitioner as Computer Operator W.E.F.11.7.94 in the Scale of Rs.5500 - 175 - 9000 [in WP.11656/04] [d] to redesignate and regulaise the

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petitioner as Computer Operator W.E.F. 07.3.94 in the scale of Rs.5,500 - 175 - 9000 [in WP.11657/04] respectively.

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For Petitioners : Mr. S. Silambanan

For Respondents : Mr. N. Rajan

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O R D E R

All the petitioners were working as temporary Computer Operators selected through interview by a Selection Committee appointed by the Syndicate of the University of Madras. The writ petitioners were appointed on various dates. The details are as follows :-

W.P. No.11654 of 2004 : Date of Appointment - 22.3.1995 - Computer Operator - Computerized Results Processing Section (CRPS)

W.P. No.11655 of 2004 : Date of Appointment - 10.1.1995 - Programme Assistant Department of Nuclear Physics

W.P. No.11656 of 2004 : Date of Appointment - 11.7.1994 - Computer Operator - Computerized Results Processing Section (CRPS)

W.P. No.11657 of 2004 : Date of Appointment - 7.3.1994 - Computer Operator - Computerized Results Processing Section (CRPS)

The appointments were made on the basis of the petitioners' educational qualifications, performance in the interview and subject to the approval by the Syndicate. The appointments were termed as temporary and all the petitioners worked for four to five years, hoping that their services will be regularized in the posts of Computer Operator. The Controller of Examination also emphasized the good services rendered by three of the petitioners in the Computerized Results Processing Section (CRPS) and the other petitioner in the Department of Nuclear Physics and pointed out that it will not be in the interest of the University to dispense with their services. The petitioners were led to believe that their services will be regularized as Computer Operators. In the case of the writ petitioner in W.P. No.11655 of 2004, the Establishment Committee had resolved at its meeting held on 7.3.1996 that the approved selection procedure was already followed while selecting Thiru. R. Shanmugam and that his

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services may be regularized against the vacant post and he be designated as Computer Operator. It was placed before the Syndicate, which also passed a Resolution that out of the four vacant posts of Technical Officer in the Department of Crystallography and Biophysics, two posts be converted as Computer Operators and one should be transferred to the Department of Nuclear Physics and Thiru. R. Shanmugam be appointed as Computer Operator. This Resolution is dated 11.7.1999. But yet, nothing transpired after the said Resolution.

2. Thereafter, the petitioners came across the advertisements in the newspapers on 10.3.1997 and 13.3.1997 calling for fresh applications for filling up the posts of Computer Operator. Aggrieved by this, the petitioners filed W.P. No.4620 of 1997 for a certiorarified mandamus to quash the said advertisement and for a direction to the respondent to regularize the services of the petitioners. When the writ petition was pending, the Vice Chancellor and the Registrar of the University of Madras called upon the petitioners. The petitioners claim that they promised the petitioners that as soon as they withdrew the writ petition, their request will be considered and they will be regularized as Computer Operators in the scale of Rs.5,500-175-9,000. The petitioners, therefore, withdrew the said writ petition on 14.9.1998 with liberty to approach the High Court for the same cause of action. According to the petitioners, at that time, many posts of Computer Operator were vacant and so, all of them naturally believed that they would be appointed in those posts. On 1.10.1998, the Syndicate resolved that the nine temporary Computer Operators be absorbed against the existing vacancies of 55 Assistants with effect from 1.10.1998 subject to the following conditions :

(1) The shortfall if any in the communal roster should be made up in future appointments of Assistants.]
(2) Such of those who do not possess a basic University Degree or Diploma in Computer Science / Computer Application should qualify for the same within a period of 3 years from the date of absorption from the recognised University / Institution.
(3) Their inter se seniority will be fixed along with other Assistants.
(4) Anomalies if any will be dealt by the Establishment Committee.

Orders of appointment were issued and the petitioners were appointed as Assistants. The only reference to qualification made in the Resolution is, as seen above, the possession of a basic University Degree or a Diploma in Computer Science/Computer Application. The petitioners were shocked to see that the Vice Chancellor and the Registrar of the University had gone back on

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their promise of appointing the petitioners as Computer Operators, which was the basis for their withdrawing the writ petition. However, according to the petitioners, the Vice Chancellor and the Registrar assured the petitioners that if they took up the posts of Assistant on a regular basis, steps will be taken to post them as Computer Assistants in the light of the earlier recommendation. Believing this, the writ petitioners agreed to the appointments as Assistants.

3. About seven months thereafter, the Registrar issued a communication to the petitioners stating that for the post of Assistant, typewriting qualification is a requirement and therefore, the petitioners should acquire the same within a period of two years. Since this was never communicated in the original orders of appointment, the petitioners were shocked. But again, the Registrar assured them that this was only to avoid friction between the other Assistants who were appointed only if they had the basic typewriting qualification. Out of the five writ petitioners, only the petitioner in W.P. No.11657 of 2004 acquired the typewriting qualification within the stipulated period of two years and he was confirmed with effect from 5.4.2001. As regards the other four writ petitioners, they were given a further period of one year to get their services regularized and confirmed. They acquired their typewriting qualifications within the stipulated period. The petitioners kept representing to the respondent to re-designate them as Computer Operators in the existing vacancies. They were asked to appear before the Establishment Committee and they produced all their service particulars before the Committee. The petitioners in W.P. Nos.11654 to 11656 of 2004, they received the impugned order dated 29.3.2004, by which they were informed that they became fully qualified for the posts of Assistant only on 16.2.2003 and therefore, the services put in by them as Assistants from 5.10.1998 to 15.2.2003 would be treated as temporary and that they would be on probation for a period of two years with effect from 16.2.2003. As regards the petitioner in W.P. No.11657 of 2004, he was informed by the impugned order dated 8.4.2004 that he became fully qualified only on 24.2.2001, that the earlier declaration of probation would stand canceled and his services would be regularized only with effect from 25.2.1993 and that he had already satisfactorily completed the period of probation of two years. What is stated above are the facts as averred by the petitioners.

4. Learned counsel for the petitioners would point out to the orders of appointment of the petitioners as Assistants. As regards the petitioners in W.P.Nos.11654 to 11656 of 2004, the order is dated 5.10.1998 and the relevant clause therein states that he/she will be on probation for a period of two years exclusive of the period spent on leave. The period of probation

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is liable to be extended, if his/her work and conduct are not satisfactory. With regard to the petitioner in W.P. No.11657 of 2004, the impugned order reads that the service put in by him as Assistant from 5.10.1998 to 15.202003 has been treated as temporary service. He is also informed that he will be on probation for a period of two years with effect from 16.2.2003 exclusive of the period spent by him on leave.

5. Learned counsel for the petitioners would submit that the respondents had not acted fairly insofar as the petitioners are concerned. The petitioners withdrew the earlier writ petition only on the understanding that they would be appointed as Computer Operators. Having held out a promise, the respondent appointed the petitioners as Assistants, but till date, the work that is extracted from them is of a Computer Operator. It was submitted that in their original orders of appointment, there was nothing to indicate that the appointments of the petitioners required them to acquire the qualification of typewriting and if that is so, the post-appointment communication requiring them to acquire this qualification was unsustainable. The learned counsel also pointed out that in the original orders of appointment, the requirement that was stipulated was a Diploma in Computer Science/Computer Application along with a basic University Degree, which qualification all the petitioners possessed right from the date when they were appointed as temporary Computer Operators. Learned counsel further submits that to add insult to injury, the respondent has unilaterally "assessed the period of probation earlier undergone and the petitioners are now required to undergo a probation period afresh". This, according to the learned counsel, would cause injustice to the petitioners since though the petitioners have been working from 1995, by virtue of this impugned order, they will rank behind their juniors. As regards the petitioner in W.P. No.11657 of 2004, the learned counsel submitted that there was no justification to extend his period of probation beyond 2001.

6. Learned counsel relied on several judgments. In A.I.R. 1968 S.C. 1210 [State of Punjab vs. Dharam Singh], wherein the Supreme Court held that as per the proviso to Rule 6(3) of the Punjab Educational Service (Provincialised Cadre) Class III Rules 1961, a probationer officiating in a permanent post is allowed to continue in that post after the expiry of three years and that when no express order of confirmation was passed, he must be deemed to have been confirmed in that post. This judgment may not apply to the present case since there, the rule prohibited the extension of the probation period beyond three years. In 1997 (7) S.C.C. 443 [Dayaram Dayal vs. State of Madhya Pradesh], the Supreme Court held that the deemed completion of the probation period would depend on the order of appointment and the

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applicable rules. In that case also, the relevant rules provided for extension of the probation period, but it was qualified by the phrase, "for a further period of not exceeding two years". Hence, this decision also may not apply to the case of petitioners here. In J.T. 2004 (9) S.C. 602 [Registrar, High Court of Gujarat vs. C.G. Sharma], the Supreme Court has held that there is no such thing as automatic confirmation.

7. The learned counsel for the respondent would submit that the petitioners were never have led believe that at the end of the two years of probation, they would be confirmed. Immediately after their appointments, they had been informed that typewriting was a necessary qualification. Learned counsel would also submit that the prayer in the writ petitions is misconceived; it includes two different and unconnected reliefs, one which relates to the quashing of the order which requires them to undergo a further period of probation and the other for their appointments as Computer Operators. Learned counsel also submitted that a Computer Operator has no promotion prospects and is likely to get stagnated and hence, it is to the petitioners advantage if they continue to work as Assistants.

8. In the counter affidavit, the respondent has specifically denied that the petitioners had at any point of time been assured that they would be appointed as Computer Operators.

9. The case of the petitioners is that though they have been appointed as Assistants, they have been working as Computer Operators. This has not been specifically denied by the respondent. Copies of some intra-departmental communication have been enclosed by the petitioners in the typed set of papers indicating the satisfactory manner in which the petitioners have been discharging their work. With regard to the petitioner in W.P. No.11655 of 2004, the Head of the Department of Nuclear Physics has written to the Registrar that he will be very happy to absorb him permanently and further that he was called through the Employment Exchange and the selection was made by a duly constituted Expert Committee and approved of by the Syndicate. It is relevant to note that the petitioners had also requested for waiver of the requirement of typewriting qualification since they had, "acquired the additional qualification, computer skills etc." The writ petitioners have also produced the particulars of the scales of pay for various administrative posts and the sanctioned strength of the non-teaching staff which show that the sanctioned strength of Computer Operators is 14.

10. The probation period for all the petitioners commenced on 5.10.1998. It is no doubt true that the orders of appointment said that the probation would be for two years depending on their conduct. Subsequently, they were informed of the necessity to

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acquire the typewriting qualification. When the petitioners had been insisting that they should be appointed as Computer Operators, for which post they had the qualification, it is difficult to understand the attitude of the respondent in appointing them as Assistants and thereafter directing them to acquire the qualification required for that post and delaying their confirmation on that ground. However, though the petitioners had asked for waiver of the typewriting qualification, they have not challenged the order of the respondent insisting on their acquisition of the typewriting qualification and have proceeded to acquire the requisite qualification.

11. It is admitted that the Tamil Nadu State and Subordinate Services Rules apply to the University of Madras. Rule 26 of the said Rules deals with termination or extension of probation. Rule 26(b)(i) provides that if within the period of probation, a probationer fails to acquire the special qualifications or to pass the special tests, if any, the appointing authority may discharge him from service unless the period of probation is extended under Rule 28. Rule 28 empowers the appointing authority to extend the period of probation to enable him to acquire the special qualification or pass the prescribed tests. In this case, the respondent has extended the time for the petitioners to acquire the special qualification. When their probation periods have been extended only so that they acquire the special qualification, on their acquisition of the special qualification, the respondent shall have to declare the completion of their probation periods, unless on account of unsatisfactory work or conduct, their probation periods cannot be declared. But, the respondent cannot re-start the probation periods afresh, from the date on which the petitioners have acquired the special qualification. It must be remembered that the probation periods were extended only to enable the petitioners to acquire the special qualification. The impugned order of the respondent cannot, therefore, be sustained.

12. It is, no doubt, true that there is no automatic confirmation. But at the same time, the petitioners whose periods of probation have already been extended and who have completed the required tests, cannot be asked to undergo probation period afresh. Similarly, the petitioner in W.P. No.11657 of 2004 acquired the said qualification within the time specified by the respondent and therefore, his probation period was rightly declared as having been completed on 5.4.2001. When that is so, the impugned order, unilaterally stating that his service would be treated again as on probation for a period of two years with effect from 25.2.2001, cannot be sustained and the same is accordingly quashed. The respondent shall, subject to the petitioners' work and conduct being satisfactory, declare

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their probation on the respective dates of their acquiring the typewriting qualification.

13. As regards the other prayer in the writ petitions for appointment of the petitioners as Computer Operators, learned counsel for the respondent would submit that all the petitioners, though appointed as Assistants, are doing the work of Computer Operators and are receiving less pay since Computer Operators are entitled to more pay than Assistants. Learned counsel for the respondent would submit that the appointment of the petitioners as Computer Operators would not be advantageous to them since there are no promotion prospects. The position of the sanctioned strength shows that there are 14 vacancies in the posts of Computer Operator. If the respondent is utilizing the special skills of the petitioners as Computer Operators and if Computer Operators are paid more than the Assistants, then the respondent, in all fairness, should consider appointing the petitioners as Computer Operators, especially when there are vacancies in that post and give the petitioners the pay that they are entitled in that post, subject of course, to the Rules. If the stand taken by the respondent that Computer Operators get stagnated and that there are no promotional prospects is correct, then the respondent may consider the request of the petitioners for their being appointed as Computer Operators after obtaining undertakings from them that they are fully aware that the post of Computer Operators will have no scope for further promotion.

14. The writ petitions are partially allowed with the above directions. No costs. Consequently, W.P.M.P. Nos.13706 to 13709 of 2004 are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To
The Registrar.University of Madras,Chepauk, Chennai-5.

+ 4 ccs to Mr.N.Rajan, SR.Nos.57345 to 57348.

+ 4 ccs to Mr.P.Silambanan, SR.56903.

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